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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

NO. 533

EURA MAE HIGGINBOTHAM GREEN, ET AL.,
Petitioners,

v.

THE TEXAS GULF SULPHUR COMPANY, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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May it please the Court:

This brief is filed in behalf of respondent, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, opposing the petition for writ of certiorari.

Respondent respectfully prays this Court not to review this cause but to deny the petition for writ of certiorari, because of the following:

1. The questions presented are foreign to the decision of the Court of Appeals.

2. The decision of the Court of Appeals is not in conflict with the decision of another Court of Appeals or of The Supreme Court.

3. The decision of the Court of Appeals does not involve an important question of federal law which has not been, but should be, settled by The Supreme Court.

4. The decision below turns on its own particular facts and will not affect anyone except the litigants.

5. The decision of the Court of Appeals in this cause is correct, with due regard for the questions sought to be raised by the petition for writ.

Reasons why Certiorari Should not be Granted

The Court of Appeals decided this cause against petitioners, holding that:

> "Appellants cannot use the shield of sovereignty to escape the conclusive effect of their own 125 years of complete non-claim." 393 F.2d 67 (1968) at p. 68

The Court said in this cause:

> "This diversity suit is the third in a trilogy concerning the ownership of the Humphries survey. See Humphries v. Texas Gulf Sulphur Company, 5 Cir. 1968, 393 F.2d 69; Beasley v. McFaddin, 5 Cir. 1968, 393 F.2d 68."

Petitioners cite V.C.S. 5519a (p. 4) as the "non-claim" statute, when actually the provisions of this statute deprive title against those who have "not exercised dominion over such land." This statute would deprive petitioners of title rather than aid them.

Petitioners cite *Houston Oil Co. of Texas v. Gore,* 159 S.W. 924, p. 927, but failed to set forth the sentence in this opinion immediately preceding, which reads:

> "The plaintiff seeking to recover on his limitation title under the ten-year statute could only recover *on the strength of his own title.*" (emphasis added)

The *Houston Oil Co.* case is of no help to petitioners, for in addition to the above, the holding of the Court was against the claimants under the patent from the State.

Petitioners cite 393 F.2d 69, *Humphries v. Texas Gulf Sulphur Company,* (p. 5), one of the trilogy of suits referred to by the Court of Appeals in the instant case. The following is set forth from the opinion in the *Humphries* case:

> "This diversity action proves that unlike old soldiers, expectant heirs never even fade away. It is one of a trilogy that hopefully will terminate the continuing battle between the heirs and the active users of the Humphries survey.' . . ."
>
> "'The other cases are Beasley v. McFaddin, Jr., 5 Cir. 1968, 393 F.2d 68; Green v. Texas Gulf Sulphur Company, 5 Cir. 1968, 393 F.2d 67. The history of the litigious nature of the Humphries heirs is documented in: Glover v. McFaddin, 5th Cir. 1953, 205 F.2d 1; Jones v. McFaddin, 382 S.W. 2d 277 (Tex.Civ.App.—Texarkana 1964, writ ref'd n.r.e.); Foster v. Gulf Oil Corp., 335 S.W.2d 845 (Tex.Civ.App.—Beaumont, 1960, writ ref'd n.r.e.); McBride v. Gulf Oil Corp., 292 S.W.2d 151 (Tex.Civ.App.—Beaumont 1956, writ ref'd n.r.e.)."
>
> ". . . The land involved in this case, known as the Humphries survey, is located in Southeast Texas.

It has made an enormous economic contribution to the state, primarily because of the famed Spindletop Oil Field discovered there in 1901. . .'

". . . In the instant case the assertion is that the land was granted to Pelham and not William Humphries and that all subsequent conveyances are therefore fraudulent; in the Beasley case the assertion is that the William Humphries who conveyed to Inglish was not the heir of Pelham and consequently had nothing to convey; finally, the Green case presents the issue of whether a tax deed in 1850 vested title to the land in the State of Texas. . ."

". . . These endless suits have been an harassment to the land and mineral owners as well as a useless expense of time and money by litigants and courts. . ."

". . . Indeed, there is no evidence that appellants or their predecessors ever had possession of the land, paid any taxes, exercised any dominion over the land, or even asserted a claim to it. . ."

". . . The Pelham Humphries litigation is over and the Humphries heirs have no title in the league of land."

Petitioners (p. 5) propose an alternative to enable them to pursue a cause of action as discoverers of a vacancy under Article 5421-C, Section 6 of the Texas Civil Statutes. The instant cause has no relation to a proposed claim under the Texas Vacancy Statute, therefore, their complaint is not pertinent.

Petitioners (p. 5) cite 28 U.S.C.A., Sec. 1331, 42 U.S.C.A., Sec. 1983, 28 U.S.C.A., Sec. 1343(3), and the case of *McGuire v. Sadler,* 5th Cir. 1964, 337 F.2d 902.

28 U.S.C.A., Sec. 1331, concerns the amount in con-

troversy and has no bearing on the questions presented in the petition.

42 U.S.C.A., Sec. 1983, provides for civil action for deprivation of rights and does not relate to this cause.

28 U.S.C.A., Sec. 1343(3) is a civil rights and elective franchise statute providing district court jurisdiction of civil actions, Sec. (3), to redress the deprivation of rights "secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

This statute is not pertinent to this cause.

McGuire v. Sadler, 5th Cir. 1964, 337 F.2d 902 (1964), is not in point here. This case is distinguished from the *McGuire* case because plaintiffs in this case seek a decree quieting title to the land in controversy, and removing a cloud cast upon their alleged title, asking the Court to enter a declaratory judgment cancelling a Tax Deed dated December 27, 1850, to the State of Texas. Whereas in the *McGuire* case, the plaintiff sought injunctive relief against the Land Commissioner to enjoin the sale of land by the Commissioner and to prevent threatened action by the Commissioner constituting a deprivation of the plaintiff's constitutional rights.

The *McGuire* case was a class action against the Land Commissioner of Texas and others for rescission of sales by the Commissioner of alleged public school fund land and to enjoin the sale of other such land within a certain survey.

According to the opinion of the United States Court of Appeals, Fifth Circuit, October 19, 1964, written by

Circuit Judge Wisdom, L. L. McGuire, the plaintiff-appellant, brought suit against the Land Commissioner of Texas alleging that he is the owner of certain land in Presidio County and that the Commissioner under color of law, is about to sell as part of a conspiracy to deprive him of his land and to deprive others similarly situated of their land because of newly found mineral potential in the county.

The *McGuire* case is distinguished from the instant case on the facts.

The Court held in the *McGuire* case:

> ". . . Nor can this action be barred under the Eleventh Amendment as a suit against the state. By a wholesome fiction, a credit to fictions that Bentham would have endorsed, *a suit against a state officer for injunctive relief is regarded as a private suit, if the threatened action constitutes a deprivation of the plaintiff's basic federal constitutional rights.* Ex Parte Young, 1908, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714; Georgia R.R. & Banking Co. v. Redwine, 1952, 342 U.S. 299, 72 S.Ct. 321, 96 L.Ed. 335." (emphasis added)

CONCLUSION

It is evident from the foregoing that there is no merit in the petition for a writ of certiorari in this cause. Therefore, it is respectfully prayed that the Writ of Certiorari be denied.

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CERTIFICATE

I, Houghton Brownlee, Jr., attorney for respondent Jerry Sadler, Commissioner of the General Land Office of the State of Texas, on this the 9th day of October, 1968, have served copies of this respondent's brief opposing the petition for writ of certiorari on the petitioners named therein by depositing the same in the United States Post Office, with air mail first class postage prepaid, addressed to the Hon. Sizer Chambliss, the attorney for the petitioners, 400 Pioneer Building, Chattanooga, Tennessee, 37402, by United States Certified Mail, with return receipt requested.

HOUGHTON BROWNLEE, JR.